

R. Scott Taylor, OSB No. 74324
Clinton L. Tapper, OSB No. 084883
Taylor & Tapper
400 E 2nd, Suite 103
Eugene, OR 97401
Ph: 541-485-1511 / fax: 541-246-2424
Scott@taylortapper.com
Clinton@taylortapper.com

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

R&M FIBERGLASS, INC.,

Plaintiff,

vs.

SCOTTSDALE INDEMNITY COMPANY,

Defendant

CASE NO.: 6:17-cv-1384

COMPLAINT

BREACH OF CONTRACT

Claim over \$75,000

Demand \$791,507.75

JURY TRIAL REQUESTED

COMES NOW the Plaintiff, represented by the undersigned attorney, and alleges as follows:

VENUE AND JURISDICTION

1. At all times material hereto, R&M Fiberglass, Inc. (hereafter “R&M”) is and has been a corporation domiciled in the county of Marion in the State of Oregon.
2. At all times material hereto, Scottsdale Indemnity Company, (hereafter “SCOTTSDALE”) is an insurance corporation authorized to issue insurance and conduct business in the State of

COMPLAINT

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Taylor & Tapper
400 E 2nd Ave, Suite 103
Eugene, OR 97401
Ph: (541) 485 – 1511 / Fax: (541) 264 - 4866

Oregon, but is a foreign carrier with its principal place of business headquartered in another state.

3. The claim and controversy in this matter exceeds \$75,000.00
4. The acts and/or omissions that form the basis of this complaint took place in the State of Oregon, this Court has jurisdiction over this matter pursuant to 28 USC §1332, and Venue is proper in the Eugene Division.

FACTS MATERIAL TO ALL CLAIMS FOR RELIEF

5. R&M was the beneficial owner of certain real property located in Marion County, Oregon, and commonly referred to as 7095 3rd Street, Turner, Oregon 97392 (hereafter “the Property”).
6. At all times material to this Complaint, R&M and the Property were insured by a commercial policy issued by SCOTTSDALE, specifically described as policy no.: CPS2193647. (hereafter “the Policy”).
7. At all times material to this Complaint, all premiums due from R&M were paid, and the Policy was in full force and effect.
8. In consideration for payment of premiums by R&M, the Policy promised to provide coverage against damage and losses caused by fire to structures, contents and additional coverages contained and set forth in the Policy, subject to the terms and conditions of the Policy.
9. The Policy provides for Actual Cash Value (ACV) payment, and subsequent Replacement Cost payment for the coverage to the property.
10. On or about July 31, 2015, a fire caused damage to the Property (hereafter “Loss #1”).

11. R&M filed a claim in connection with Loss #1 and SCOTTSDALE assigned Claim Number 01664628 (hereafter “Claim #1”).
12. SCOTTSDALE accepted Claim #1, acknowledged coverage under the provisions of the Policy, and issued partial payments under the provisions of the Policy
13. R&M has performed or will perform all conditions required under the Policy for payment of Claim #1.
14. On or about May 1, 2016, a separate fire caused damage to the Property (hereafter “Loss #2”).
15. R&M filed a claim in connection with Loss #2 and SCOTTSDALE assigned Claim Number 01705872 (hereafter “Claim #2”).
16. SCOTTSDALE accepted Claim #2, acknowledged coverage under the provisions of the Policy, and issued partial payments under the provisions of the Policy.
17. R&M has performed or will perform all conditions required under the Policy for payment of Claim #2.
18. SCOTTSDALE’s refusal to fully pay the benefits due to R&M under Claim #1 and Claim #2 are material breaches of the Policy.
19. As a result of the breaches of contract outlined in this Complaint, Plaintiff has been forced to hire an attorney to represent it in this matter. Plaintiff is entitled to recover its reasonable attorney fees incurred herein under ORS 742.061.
20. Plaintiff is entitled to recover prejudgment interest on its damages at the legal rate of 9% per annum.

BREACH OF CONTRACT: FAILURE TO PAY CLAIM #1 – STRUCTURE

21. R&M herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.
22. R&M has provided SCOTTSDALE with an evaluation of damages to the structure totaling \$455,009.93 RCV for Claim #1.
23. Using SCOTTSDALE's approximate depreciation figures (4.68%), R&M is entitled to \$433,715.46 ACV for structure damages in Claim #1.
24. SCOTTSDALE has refused, failed, and neglected to pay R&M for damages to the structure for Claim #1 in excess of \$326,324.21 ACV.
25. SCOTTSDALE's refusal to pay is a material breach of Policy.
26. SCOTTSDALE's conduct, as alleged herein, acted to prevent R&M from complying with the replacement cost conditions of the Policy.
27. R&M is entitled to an additional \$102,155.11 for full replacement cost in Claim #1, regardless of actual replacement.

BREACH OF CONTRACT: FAILURE TO PAY CLAIM #1 – BUSINESS PERSONAL

PROPERTY

28. R&M herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.
29. Loss #1 caused damage to R&M's business personal property.
30. In Claim #1, R&M submitted an evaluation of damages to business personal property totaling \$42,042.39 RCV.
31. Using SCOTTSDALE's approximate depreciation figures (5%), R&M is entitled to \$39,940.27 ACV for damage to business personal property in Claim #1.

32. SCOTTSDALE has refused, failed, and neglected to pay R&M for damages to business personal property for Claim #1 in excess of \$36,672.13 ACV.
33. SCOTTSDALE's failure to issue payment is a breach of the Policy.
34. R&M is entitled to an additional \$3,268.14 ACV from SCOTTSDALE for the damage to business personal property caused by Loss #1.

BREACH OF CONTRACT: FAILURE TO PAY CLAIM #1 – BUSINESS INCOME

35. R&M herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.
36. The Policy provided business income coverage for R&M.
37. The Policy's additional coverages for business income provides for expenses necessarily incurred to avoid further loss of business income.
38. Specifically, the Policy provided that SCOTTSDALE would "pay necessary expenses you incur, except the cost of extinguishing a fire, to avoid further loss of Business Income. The total of our payment for Business Income loss and Expenses To Reduce Loss will not be more than the Business Income loss that would have been payable under this Coverage Form (after application of any Coinsurance penalty) if the Expenses To Reduce Loss had not been incurred."
39. Loss #1 consisted of a fire to R&M's main manufacturing building on the Property.
40. R&M's manufacturing operations were shutdown for approximately the first seven (7) days following Loss #1.
41. R&M took steps to minimize lost business income after Loss #1.

42. R&M incurred \$162,274 in additional payroll expenses to minimize Loss #1's effect on R&M's business operations.
43. R&M's additional payroll expenses were successful in minimizing R&M's lost business income.
44. R&M's mitigation efforts avoided a Business Income Loss claim to SCOTTSDALE of approximately \$575,100 between August 2015 through April 2016.
45. R&M is entitled to the \$162,274 in the additional payroll expenses incurred to avoid further loss of business income as a result of Loss #1.
46. SCOTTSDALE has refused, failed, and neglected to pay R&M's additional payroll expenses, which minimized R&M's lost revenue as a result of Loss #1.
47. SCOTTSDALE's refusal to pay any of the additional payroll expenses incurred as a result of Loss #1 is a material breach of the Policy.

BREACH OF CONTRACT: FAILURE TO PAY CLAIM #2 – STRUCTURE

48. R&M herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.
49. Two structures on the Property were damaged by Loss #2 ("Structure A" and "Structure B").
50. Damages to Structure A exceeded the Policy limits of \$300,000.
51. The Policy provides for an additional \$25,000 for debris removal if the insured exceeds the policy limits on the underlying indemnity.
52. SCOTTSDALE has paid the Policy limits of \$300,000 for Structure A.
53. SCOTTSDALE and R&M's evaluations of debris removal for Structure A exceed \$25,000.
54. The conditions for an additional \$25,000 for debris removal were satisfied.

55. SCOTTSDALE has refused, failed, and neglected to pay R&M's cost in Claim #2 for the debris removal of Structure A.

56. SCOTTSDALE's failure to pay is a breach of the Policy.

57. R&M is entitled to an additional \$25,000 for the cost of debris removal for Structure A.

58. R&M has provided SCOTTSDALE with an evaluation of damages to Structure B totaling \$80,406.62 RCV for Claim #2.

59. Using SCOTTSDALE's approximate depreciation figures, R&M is entitled to \$75,393.87 ACV for Structure B damages in Claim #2.

60. SCOTTSDALE has refused, failed, and neglected to pay R&M for damages to the structure in excess of \$52,521.05 ACV.

61. SCOTTSDALE's refusal to pay the damages to Structure B is a material breach of Policy.

62. SCOTTSDALE's conduct, as alleged herein, acted to prevent R&M from complying with the replacement cost conditions of the Policy.

63. R&M is entitled to an additional \$24,384.67 for full replacement cost of Structure B in Claim #2, regardless of actual replacement.

BREACH OF CONTRACT: FAILURE TO PAY CLAIM #2 – BUSINESS INCOME

64. R&M herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.

65. The Policy provided business income coverage for R&M.

66. The Policy's additional coverages for business income provides for expenses necessarily incurred to avoid further loss of business income.

67. SCOTTSDALE did issue some payments under business income coverage for Claim #2.

68. R&M's evaluation of business income coverage for Claim #2 is \$180,974 in excess of SCOTTSDALE's current payments.

69. R&M is entitled to an additional \$180,974 in business income coverage for Claim #2.

70. SCOTTSDALE has refused, failed, and neglected to pay additional amounts owed to R&M under business income coverage for Claim #2.

71. SCOTTSDALE's refusal to pay the additional lost business income incurred as a result of Loss #2 is a breach of the Policy.

BREACH OF CONTRACT: FAILURE TO PAY CLAIM #2 – BUSINESS PERSONAL
PROPERTY

72. R&M herein re-alleges and re-incorporates all preceding paragraphs into this cause of action.

73. Loss #2 caused damage to R&M's business personal property.

74. In Claim #2, R&M submitted an evaluation for damaged business personal property of \$769,064.70 RCV, exceeding the Policy limits of \$300,000.00.

75. In Claim #2, SCOTTSDALE has paid only \$6,548.17 for damaged business personal property.

76. SCOTTSDALE has refused, failed, and neglected to pay Policy limits to business personal property for Claim #2.

77. SCOTTSDALE's failure to issue payment is a material breach of the Policy.

78. R&M is entitled to an additional \$293,451.83 for the damage to business personal property in Claim #2.

PRAYER

WHEREFORE, Plaintiff prays for judgment in the amount \$791,507.75 as set forth above, and for its costs and disbursements incurred herein, attorneys' fees, prejudgment interest, and for any other relief this Court deems just and appropriate.

DATED: September 1, 2017

TAYLOR & TAPPER

s/ Nickolaus N. Gower

Nickolaus Gower, OSB No. 143274
400 E 2nd, Suite 103
Eugene, OR 97401
Ph: 541-485-1511 / fax: 541-246-2424
nick@taylortapper.com